

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

In Re KORNIT DIGITAL LTD.
SECURITIES LITIGATION,

CIVIL ACTION NUMBER:

2:23-cv-00888

ORAL ARGUMENT

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August 15, 2024
Commencing at 3:21 p.m.

B E F O R E: THE HONORABLE MADELINE COX ARLEO,
UNITED STATES DISTRICT JUDGE

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United States District Court
Newark, New Jersey

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(PROCEEDINGS held in via video conference before the Honorable
MADELINE COX ARLEO, United States District Court Judge at 3:21
p.m.)

THE COURT: All right, guys. Good afternoon.

I know I'm really dark. I don't know why but it's
probably because of my government commuter, but that's a whole
other -- you guys are all from the big firms that have the nice
computers.

Anyway, thank you for participating today and thank
you for being so patient. I had a criminal matter that,
unfortunately, was taking longer than I anticipated; so thank
you for your patience.

All right. So I scheduled this case for oral
argument in connection with the motion -- defendant's motion to
dismiss the Consolidated Complaint. And I will tell you at the
onset I'd like to have a conversation, a discussion today about
some of the deficiencies that are in the Complaint.

I am going give plaintiffs an opportunity to replead,
which is what I believe is fair under existing third circuit
case law. I think some of them could potentially be corrected;
some of them can't, but I want to just flag some of them and
have a little bit of oral argument on them and then we can set
a time frame up for plaintiff to replead and then for renewed
motions to dismiss.

1 So let me begin by telling you how I have approached
2 it, which is I have looked at some of the claims under 10b and
3 the various misrepresentations that were made by the defendants
4 and the evidence of falsity.

5 So let's go through them, and I sort of them have
6 pulled out from the briefs and from the Complaint, and tell you
7 what -- I'll hear from both sides. I'll tell you what has me
8 troubled about them. I put them in order. There's, like, six
9 different I would say buckets of misrepresentations that are
10 the most discussed in the briefing and which give me most
11 pause.

12 I'd like to begin by talking about the loss of
13 business from Delta and Fanatics.

14 So the misstatement -- before we begin, I didn't put
15 appearances on the record, before I get to anything else. Let
16 me ask everyone to put their appearances on the record and tell
17 me who will be handling the argument today for the various
18 parties. Okay?

19 Let me start with plaintiff's counsel.

20 MR. HARROD: Good afternoon.

21 MR. COOPER: Good afternoon -- sorry, Jim.

22 Good afternoon, Your Honor. This is Kevin Cooper
23 from Carella Byrne. I'm joined here with my colleagues from
24 Bernstein Litowitz who will introduce themselves.

25 THE COURT: Okay.

1 MR. HARROD: Thank you, Your Honor. It's Jim Harrod
2 from Bernstein Litowitz Berger & Grossmann. I'm with my
3 colleague Mat de Carvahlo and Alec Coquin.

4 We're here representing plaintiffs today and I'm
5 happy to see you.

6 THE COURT: Okay. Thank you.

7 MS. REISER: Your Honor, Julie Reiser, also on behalf
8 of an additional plaintiff, Indiana Police Retirement System,
9 and I'm from Cohen Milstein Sellers & Toll.

10 THE COURT: Okay.

11 MR. PORTNOY: Good afternoon, Your Honor. This is
12 Sam Portnoy with Gibbons for the Kornit defendants, and with me
13 from Davis Polk are Ted Polubinski and Dana Seshens, also for
14 the Kornit defendants, and Dana Seshens will be handling
15 argument.

16 THE COURT: Thank you.

17 MR. BURTON: Good afternoon, Your Honor. This is
18 Allen Burton from O'Melveny & Myers on behalf of the
19 underwriter defendants, and my partner Jonathan Rosenberg, also
20 with O'Melveny will be addressing the Court on anything related
21 to the underwriting defendants.

22 THE COURT: Thank you.

23 All right. I think that's everyone.

24 So let's begin with some of the misrepresentation
25 claims under 10b. Let's start with the loss of business from

1 Delta and Fanatics.

2 I'll put it in context. Plaintiffs claim that
3 defendants failed to disclose the loss of two customers, Delta
4 and Fanatics to their competitor M&R.

5 Specifically, I think it's on paragraph 146, in
6 response to an analyst's questions about Kornit's customers
7 including Amazon, Adidas, and Fanatics, Samuel stated that,
8 quote, Kornit is actually the perfect fit for all of them
9 providing the on-demand sustainable production with no
10 limitations, and we see huge growth from net new and from our
11 top 10 customers.

12 Plaintiff's evidence of falsity is alleged in
13 paragraphs 99, 182 and 186.

14 99, Samuels admitted in May 2022 that since the
15 quarter beginning in July 2021, Kornit knew that Delta had
16 decided to acquire digital printing systems from one of
17 Kornit's competitors.

18 In January of 2020 -- this is in Paragraph 182 --
19 Samuel stated there will be different top 10 customers, so
20 Amazon will stay probably in number one, also will be number
21 one in 2026, but number two, three, and four will change
22 because we see some new markets entering, some new branding big
23 players, et cetera.

24 I query whether that statement is even technically
25 false.

1 Then in paragraph 186, Samuel touted that the
2 company's network of more than 1300 customers, including some
3 of the biggest in the world. Amazon is our biggest customer...
4 many systems of Kornit all around the world, but other
5 customers like Adidas and Fanatics and then Stakes and DSG,
6 both from leading brands and fulfillers and marketplaces that
7 are using our technology.

8 So I query whether, at that point, Fanatics was still
9 a customer, whether that statement is even technically false.

10 But let's focus on the first one, and here's what I'm
11 concerned about. The statement that Samuel admitted that in
12 May of 2022 that since the quarter beginning in July of '21,
13 Kornit knew that Delta had decided to acquire digital printing
14 systems, but one of Kornit's competitors, I guess this M&R,
15 that that happened -- July of 2021 is after June of 2021 when
16 the statement was made.

17 So how does that demonstrate falsity? I mean, the
18 timing issue here seems to be a little off.

19 Who would like to address that from the plaintiffs?

20 MR. HARROD: Your Honor, I can -- I can address that,
21 if you'd like.

22 THE COURT: Sure.

23 MR. HARROD: And thanks for taking the time to walk
24 through what your concerns are about these statements.

25 I think that the way that we focus on these

1 statements is a little bit more broad in the sense and thinking
2 about statements being misleading as opposed to necessarily
3 false.

4 What we allege is that there is a downturn in
5 business with these two customers in particular that is known
6 about beginning in July of 2021. So your point is well taken
7 about the June statement, but the way that we've addressed the
8 other statements that you mentioned, and many other statements
9 that talk about the competition that Kornit says it's not
10 facing is that, in fact, from the beginning of the Class
11 Period, multiple former employees reported to us that it was
12 known that M&R was a great competitor and was actually going to
13 steal -- it's stealing business or winning business from Kornit
14 during that time period.

15 And so it's misleading to say things about these
16 particular customers, but also in general about the competitive
17 marketplace when you know that you are facing strong
18 competition from a worthy competitor, which they were. So
19 that's one way of looking at this.

20 And we think the statements -- we kind of view the
21 statements about Delta and Fanatics as another piece with the
22 general statements of our competition, which we identified in
23 our brief, some of which are incorporated in the statements you
24 made. But broadly speaking, they know from July, at least, of
25 '21 that they're going to lose some of the business.

1 And they continue to make statements not only about
2 Fanatics later than that into '22 and about the top 10
3 customers, but they make many, many statements which we've
4 identified in the complaint about competition. And so --

5 THE COURT: Let me stop you for a second, Mr. Harrod.

6 MR. HARROD: Sure.

7 THE COURT: I hear you, but the problem is that the
8 one direct statement about Fanatics that was either false or
9 misleading occurred right before -- happened in June and Samuel
10 admitted in May of '22 that it was since the beginning -- the
11 quarter beginning in July of 2021.

12 Let's be honest. I know you have a theory here but
13 10b is no joke and you have to prove it by a heightened
14 pleading standard.

15 So every company has, We're going to lose business,
16 We're afraid of losing a customer, and then you keep the
17 customer and you don't lose the customer. It can't be based
18 on, Well, there was talk about maybe we'll lose the customer.

19 That's not enough because that's in every business in
20 America including law firms. Right?

21 So you need to have a false misleading statement and
22 that just isn't. You need to put more meat on the bones of
23 this one if you want it to survive a motion. Because, you
24 know, the later statements aren't technically false. In
25 January of 2022 -- there was just a passing reference in

1 paragraph 186 to Fanatics by name and they were still
2 technically a customer in January of '22. The statement was
3 not technically false.

4 So you hear what my concern is. Think what you can
5 do -- I'll give you an opportunity to replead this again -- but
6 to address those concerns about timing. Okay?

7 MR. HARROD: Understood. Thank you, Your Honor.

8 THE COURT: All right. Let's move on.

9 This is related, I guess, from what you said a minute
10 ago, Mr. Harrod -- and we can talk about this one too -- the
11 alleged decline in customer demand, right?

12 MR. HARROD: Yes.

13 THE COURT: And so the statement is that Kornit knew
14 of a negative demand trend in fourth quarter of '21 but did not
15 disclose the true extent of the decline in demand until third
16 quarter of 2022.

17 So you allege in paragraph 166, on November 10 of
18 2021 -- this would be the fourth quarter of 2021 where you say
19 the trend began, We enter into 2022 with strong business
20 fundamentals supported by broad-based demand for our leading --
21 industry leading solutions.

22 That's a misstatement that he made, and here's what
23 your evidence of falsity was. The Kornit Konnect System, the
24 way it's pled, it's unclear what it was and what data it
25 provided. If it's just a portal online where you can -- where

1 it chose some data, some raw data, but no one knew about the
2 data, no one accessed the data, no one utilized the data, no
3 one in the company ever really looked at Kornit Konnect.
4 There's data and there's data, right? It does not assert or
5 explain how the metrics demonstrated who viewed them, what they
6 disclosed. That's the first thing.

7 92, paragraph 92, you say there was statements from
8 the Former Employee No. 3, but there's really not a lot of
9 detail about timing in context for that -- for that employment.
10 That's something I would like to see become a little bit more
11 specific.

12 Three, let's talk about Printful. There's a
13 June 7th, '22 statement that one customer, Printful, started to
14 feel a slowdown by the end of 2021 until Kornit at the end of
15 first quarter, quarter one of 2021, that it would not order
16 more systems in 2022.

17 But if you look at the whole statement, it's really
18 referring to Printful, and query whether the end of 2021 -- how
19 that timing relates and whether it predates the November 2021
20 statement by Samuel. It's unclear from the Complaint.

21 MR. HARROD: So, Your Honor, is it okay if I respond?

22 THE COURT: Sure, of course.

23 MR. HARROD: Thank you.

24 Look, I think -- the issue with demand -- let me
25 respond first about the way demand worked and how closely they

1 tracked it. I think defendants say -- and I'll try and find
2 the quote -- himself said that they know everything that their
3 customers are doing.

4 So the way Kornit's business works is that they sell
5 printers. The printers are very expensive, and the way their
6 printers work is that you have to buy ink from Kornit, too.
7 About 33 percent of their revenue is in the form of
8 consumables. They have software on the printers called Kornit
9 Konnect that allows the company to track what the printers are
10 doing in real time.

11 Defendant Samuel said, We know everything that the
12 customer is doing. So he himself said that.

13 And we also have allegations that we got from a
14 former employee who reported that there's a document called an
15 Ink Report that provides further detail about the consumption
16 of the customer's ink.

17 So it would make sense given that 33 percent of their
18 revenue is from ink that the customers were required to buy
19 from Kornit that they want to know -- they know what the
20 customers are buying in terms of the inks, they have the
21 revenue and the receivables from that, but they're also
22 tracking it because it's their best knowledge way of tracking
23 the demand of the customers.

24 And so we think that there's very strong allegations,
25 in fact, that they knew about the decline in demand.

1 The decline in demand --

2 THE COURT: But the decline in demand is not just
3 based on consumables and ink. It's based on losing whole
4 clients, not having new clients, right?

5 Because the misstatement is what Samuel said in
6 November of 2021. We enter 2022 with very strong business
7 fundamentals supported by broad-based demand.

8 So demand isn't just the ink, right? It's demand for
9 printers and other things which is 66 percent of its business.

10 MR. HARROD: Correct, and those two things,
11 obviously, conjoined, right?

12 So the capacity, the amount of excess capacity that
13 the customers have in terms of both their equipment and the
14 consumables makes up most of all of their revenues, services
15 being the other part of it. So if the customers are at a
16 hundred percent capacity and their printers are running all the
17 time and they're buying tons of ink, then the likelihood, the
18 necessity for the customer that they're going to buy new
19 machines, which will then consume more ink.

20 That's the growth story that Kornit provided at the
21 beginning of the Class Period.

22 So what's happening is they're tracking those things
23 because they are linked. So the demand for the products is not
24 just about machines, it's about consumables, too. But,
25 obviously, the two things are related. And so the CEO is

1 saying he knows everything that the customers are doing, based
2 on this system, and we have allegations based on other things.

3 Now, as to the timing of that decline, it's clear
4 that different people said different things. One of our --

5 THE COURT: Let me just stop you for a minute.

6 Tell me -- explain to me about what revenue is based
7 on? You have consumables which is 33 percent. The sale of
8 machines, they're not leased, are they? They're sold.

9 Are there any leases?

10 MR. HARROD: I don't believe so.

11 THE COURT: So they're sold. So there's not
12 recurring lease fees. There are repair fees? Is repair done
13 by Kornit?

14 MR. HARROD: One of the other false statements that I
15 hope we get to talk about is the services revenue that the
16 company generates from service contracts whereby they have
17 technicians that provide maintenance and fix machines when they
18 are broken. That's another part of their revenue.

19 THE COURT: Is that part of Kornit's revenue that
20 it's been reported?

21 MR. HARROD: Yes, yes.

22 THE COURT: What percentage of it is that?

23 MR. HARROD: I don't know off the top of my head.
24 It's low. My understanding is it's under 10 percent.

25 THE COURT: Okay.

1 MR. HARROD: They were trying to grow that part of
2 the business because the consumables and the service are more
3 of a form of revenue, unlike what would be capital expenditure
4 for their customer to buy a printer.

5 THE COURT: So the printers are the bulk of -- are
6 the lion's share of the sales, right?

7 MR. HARROD: I think that's correct, yes.

8 THE COURT: Is the expectation that more customers
9 keep buying -- new customers buy it, or you have customers
10 expanding and buying more and more machines?

11 MR. HARROD: Well, Amazon was their biggest customer
12 during the Class Period and I think Delta and Fanatics combined
13 were also in the top 10. Their revenue is concentrated -- the
14 CS says that, I think, during the third quarter of '21 that the
15 top 10 customers represent 65 percent of their revenue. I
16 don't think that's broken out between the machines and the
17 consumables and service, but those large customers who are
18 buying machines pretty continuously at that point is where the
19 revenue comes from.

20 And, importantly, I think Your Honor is on to
21 something else that we allege, which is that the story that the
22 company is telling during the Class Period about demand and
23 about growth is based on the idea that these customers have --
24 effectively will double their purchases of everything between
25 2022 and 2026. And so you have to think about whether or not

1 that's a credible statement in light of the things that we
2 allege in our Complaint.

3 But anyway, that's --

4 THE COURT: We're talking about declining customer
5 sales, it's all framed around the November 10th, 2021, Samuel
6 statement, right? That's the key statement about the alleged
7 decline in customer demand. That's in paragraph 166.

8 MR. HARROD: They make a number of statements about
9 demand well into the Class Period. They describe the business
10 as going great until June of '22. After the --

11 THE COURT: So, Mr. Harrod, there's two different --
12 you know -- it can't just be broad strokes.

13 MR. HARROD: Sure.

14 THE COURT: It can't be, right? They said this is a
15 great business and then the business tanked. That's not
16 enough. You have to allege clear -- like, who, what, where,
17 when and why misstatements, and then you have to have evidence
18 of the misrepresentation or falsity of the statement. That's
19 how it works, right?

20 So I'm trying to isolate, and this is what makes
21 these -- you know, at the core they're negligence and they are
22 mini negligence and fraud cases, all these 10b-6 cases that I
23 look at. And companies speak through different people at
24 different times and making all different kinds of statements.
25 Some of them are puffery, some are forward looking. But you

1 try to isolate and you have to isolate under the law what are
2 these statements that they said that were false.

3 To say that business is doing well or I know
4 everything that's going on in my business is different than
5 saying we enter 2022 with strong business fundamentals. And
6 your theory is when he made that statement, he knew that they
7 were in decline. Right?

8 So I'm trying to understand what are all those
9 statements because you talk about Kornit Konnect, that has to
10 be more specific. It's just not. What he knew, how he knew.

11 The fact that he says, We know everything that
12 customers are doing, in my mind, that's what a lot of people
13 say. People run law firms, I know what everyone's doing. And
14 it's not the kind of -- it's not the kind of statement that
15 really speaks to whether he -- that coupled with something else
16 may be more helpful. But if you're basing it on this Kornit
17 Konnect, you need to put a little bit more expression of what
18 was it, you know, who looked at it, and what exactly did it
19 show. Okay.

20 The Former Employee 3, there's a lot -- it's kind of
21 vague about, in paragraph 29, what he knew in November and
22 December of 2021 when that statement was made.

23 That's what I'm trying to get at. You tell me --
24 because maybe you need to reorganize this in a way that really
25 explains this whole -- part of your whole case is the customer

1 demand thing is big, but there was a decline going on in the
2 business. Customers were leaving. They weren't recurring with
3 the consumption of ink. They weren't buying new machines.
4 They weren't using the service contracts. And at the same
5 time, Samuel and others are saying the business was strong.

6 That's your case. I just don't see the evidence -- I
7 see the one statement by Samuel and I don't see a lot of
8 evidence of falsity of that statement.

9 MR. HARROD: Well, Your Honor, I don't want to
10 belabor this because it sounds like I'm not, probably, going to
11 change your mind today, and I appreciate the opportunity to
12 have another shot at pleading this Complaint. But I do just
13 want to say a couple of things about that, what you just said.

14 The defendants made statements, and these are kind of
15 similar statements that existed -- you had a case called Fresh
16 Pet probably about five or six years ago now where the CEO made
17 the same types of sort of business-directional statements that
18 the people at Kornit are making. And, in fact, they're making
19 them throughout the beginning of 2022 through the end of the
20 Class Period in June of '22. And they're saying things like
21 we're entering -- this is on January 10th. We're entering very
22 strong into '22. We have massive momentum coming from both
23 existing customers and many new customers. He's saying in
24 February, We have good visibility into the business. They
25 started '22 with outstanding momentum.

1 So I understand your concern that those statements
2 are not specific. They're not quantitative statements, but
3 they're qualitatively describing the demand underlying the
4 business and they provide the sort of understructure for this
5 somewhat amazing goal that they had presented to the market and
6 becoming a one-billion dollar revenue company. They can't say
7 that credibly without saying these other things that turned out
8 to not be true.

9 As to the underlying basis for why those statements
10 beginning in November of --

11 THE COURT: What are the statements? I know you said
12 there were statements throughout the time, but your papers talk
13 about, and the Complaint speaks to the statement by Samuel in
14 November 10, 2021. There wasn't repeats of those statements
15 saying our customer demand is increasing, we're doing -- you
16 know, we're really improving from one year to the other, post
17 that November 10, 2021 statement.

18 MR. HARROD: Your Honor, respectfully, if I could
19 just disagree with you.

20 THE COURT: Yes. Tell me where in the Complaint.
21 Why don't you show me in the Complaint?

22 MR. HARROD: On January 10th, in paragraph 180. I
23 don't know what page that is.

24 THE COURT: Page 70.

25 MR. HARROD: So defendant -- I'm looking at just my

1 notes but this is a quote from the Complaint.

2 He says -- this is at a conference with the analyst
3 at Needham, Samuel says: The Company was entering very, very
4 strong into 2022 and had massive momentum coming from both
5 existing customers and many new customers.

6 He admits about in May of '22 that they knew there
7 was a downturn by the end of 2021.

8 That statement is false. It's inconsistent.

9 THE COURT: But here's the thing about timing,
10 Mr. Harrod. This is right on the tails of the November 10th
11 statement. We're talking about a trend that began at the last
12 quarter. So this is literally a month before the statement was
13 made. Let's focus on timing.

14 And when does the Class Period end again?

15 MR. HARROD: July 5th, of '22. Seven months.

16 THE COURT: So this is the beginning, right? So this
17 is the beginning January 10th of 2022.

18 Your theory is it started in the last quarter, which
19 is October, November, December, and this was, right, of '21,
20 and that it went through to -- and he was making his
21 misstatement again in January of '22.

22 Anything post the January '22 frame where he
23 reiterated this?

24 MR. HARROD: In February -- in paragraph in 191, he
25 makes statements during -- that's their fourth quarter earnings

1 release. In the press release with their earnings, Samuel
2 attributed the following language. This is from paragraph 191:
3 Our good visibility into the business, combined with our
4 experienced team, gives us the confidence that we can deliver
5 on our commitments for the balance of '22 and into '23.

6 They had said earlier prior to this that 2023 was the
7 year that they would achieve a run rate of \$500-million a year,
8 which basically meant \$125-million in quarterly revenue. They
9 never got close to that. They still haven't gotten close to
10 that. He said that. That's in February.

11 The same day during the conference call, he said,
12 Kornit started -- this is paragraph 191, I'm sorry -- started
13 2022 with outstanding momentum and the mega-trends that have
14 been fueling our business are intensifying in magnitude and
15 transformation.

16 So what he's saying there is not only are things
17 going good, they're actually getting better. He had internal
18 information, he says, in May. We knew, our customers told us,
19 you know, by the end of 2021 that things weren't going as well.
20 We have former employees saying that this -- this was known
21 within the company months before this. In May of 2022 when
22 they come out with their poor first quarter earnings, they try
23 to save it. He says on that date, this is paragraph 207, All
24 the fundamentals of the business are growing and accelerating.

25 So you will continue -- I'm skipping parts of it and

1 going to the bolded language: So you will continue seeing from
2 the global strategic account revenue -- and that's the
3 customers that he's losing, Delta and Fanatics -- coming not
4 only in Q2, but in Q3 and Q4, and definitely also in 2023.

5 So he continues to make these statements even after
6 May, a month before the end of the Class Period when the bottom
7 falls out of the stock further. He says -- and this is
8 paragraph 212 -- What happened in Q1 is a unique case.

9 They had bad earnings in Q1 but he's trying to save
10 it.

11 He says, I call it a bump, a bump on the road to
12 grow. First of all, we mentioned next year we are going to be
13 a \$500-million run business before Q4 2023.

14 He then says, We're going to bring it earlier. We're
15 going to hit that \$500-million target earlier.

16 So I understand Your Honor's point.

17 THE COURT: Let's stop you there. Let's talk about
18 the evidence of falsity of those statements, right?

19 MR. HARROD: Yes.

20 THE COURT: So we have the Kornit Konnect. I get
21 that. A little detail will be helpful. We don't have any
22 business in the company, Kornit Konnect shows the consumption
23 of ink, whatever. Whatever he knows.

24 I'm looking at paragraph 92 about the statement of
25 Former Employee 3. You know, first of all, pulling the revenue

1 in '22. He's a customer service person, right? He doesn't
2 speak for the whole company, right? He's a pretty low-level
3 person. He's not a management person, he's a customer service
4 person.

5 MR. HARROD: His title is director of professional
6 services. My understanding of what his job is is that he's
7 effectively an executive within the part of the company that
8 provides customer service to -- actually, he's running sort of
9 part of that organization.

10 And I think what the allegations are, that he's in
11 meetings where customer service and other sales issues are
12 discussed. So he's selling service. He's a manager, an
13 executive in that group, and that's why he knows this
14 information about --

15 THE COURT: So "service" meaning the service
16 contracts, repairing of equipment?

17 MR. HARROD: Yes, and I think that the point of
18 that -- those --

19 THE COURT: That's less than 10 percent of the
20 business, according to you. The bulk of the business is
21 selling of copiers or printers, and another chunk is the
22 consumption of consumer goods like ink that's 33 percent.

23 So he's talking about, while he's still in his role,
24 a sort of slowdown in the sales, in November and December it's
25 typically busy, it wasn't as busy; saw the negative effects on

1 the fourth quarter.

2 You need a little bit more to establish the falsity.
3 Maybe you need to have a little bit more detail. He has less
4 than 10 percent of the business he's involved in. Maybe there
5 was a slowdown in customer service, but the statements that we
6 just went through -- and I agree with you, they were not
7 puffery, they are statements that we're going to do a great job
8 this year, aren't really -- you could still be doing very, very
9 well and not -- and have a slowdown in customer service because
10 that's less than 10 percent of your business.

11 I think you need a little bit more here to
12 demonstrate falsity than you have. Maybe you could repackage
13 it. Maybe you can replead it. But this is -- I know you look
14 at all of them together, but I just -- I think there needs to
15 be a little bit more. Maybe you have it there, maybe you need
16 to repackage it, but I'm not -- I'm giving you a heads-up, I
17 think you need more.

18 MR. HARROD: Okay. I understand.

19 I just want to make one statement.

20 THE COURT: Sure.

21 MR. HARROD: FE3 attributes this information. He
22 explains how he got it. He learned of this information in
23 meetings that he had with the president of the Americas. A man
24 named Chuck Meyo, who I believe is not at Kornit anymore. But
25 he was the person who was the executive in charge of all of

1 Kornit's business in the Americas, which I understand to be
2 North and South America. That's a person who would know that
3 and that's who told him and that's what he said to us.

4 THE COURT: Can you get a statement from him?

5 MR. HARROD: From Mr. Meyo?

6 THE COURT: I'm just telling you I'm not saying that
7 is enough.

8 MR. HARROD: I don't know that he'll talk to me.

9 THE COURT: Let's move on. You get my point.
10 Tell me what you want to say.

11 MR. HARROD: I understand. I'm pointing back to
12 Mr. Samuel's own words. I know I said this to you before so I
13 don't want to belabor it.

14 In paragraph 83, we quote him as saying: Kornit is
15 continuously measuring everything. So we have a Konnect system
16 connecting to all our installed base for all the systems that
17 we are selling, and we know everything that our customer is
18 doing.

19 I think that that's a statement that has to be
20 credited against him. Either he's not saying the truth --

21 THE COURT: But what you just explained to me
22 though -- and I don't want to belabor it either -- you know, if
23 there's a slowdown in ink sales that's a fraction -- that's a
24 third of the business.

25 So, you know, replead it as specifically as you can,

1 but I don't see just because the -- there's data in a system
2 that is accessible coupled with a guy saying I know everything
3 that's going on. You know, it would be helpful if there was a
4 little bit more than that. That's all.

5 MR. HARROD: Thank you, Your Honor.

6 THE COURT: You're welcome.

7 Let's talk about Sticker Mule and customer growth.

8 Paragraph 167: Recently Sticker Mule integrated a fleet of our
9 Atlas systems into their business and are utilizing the growing
10 customer base to support a strong directed garment revenue
11 channel.

12 And that was in November -- a lot of things were
13 being said in November of 2021, right?

14 So here's one of the problems: Sticker Mule decides
15 to start -- this is in paragraph 41, and this is Former
16 Employee 4's statement: Sticker Mule decides to start printing
17 t-shirts and had purchased three or four of Kornit's largest
18 machines, the Atlas, at the end of 2021, but Kornit was unable
19 to get them to run properly, pushing Sticker Mule to get rid of
20 its Kornit machines in the beginning of 2022.

21 So if they purchased them at the end of 2021 and
22 Sticker Mule resold them in early '22, that would be after the
23 2021 integration statement. At the time of the statement
24 wasn't integration integrated by Kornit.

25 What's going on with Sticker Mule? It looks like

1 there's a timing issue with this one as well.

2 MR. HARROD: Understood. The defendants have made a
3 similar observation or argument, which I will respectfully
4 disagree with, and the explanation for that is that FE4 says
5 that they were unable to get printers to run properly at any
6 time.

7 So if you combine those allegations with, and
8 contrast them with what the CEO says on November 10th, you have
9 a customer who bought the system around -- in the fourth
10 quarter. We have a person who says they never got them to run.
11 He says they sold them to some other, you know, user.

12 We have another former employee that says, in fact,
13 that's correct, they sold them to another company. And one of
14 those people is also saying they never got them to work. And
15 on November 10th the CEO is saying they were integrated and
16 being utilized.

17 So if you credit the allegations from the former
18 employees, as I believe you should, then that statement can't
19 be true.

20 And it also sort of defies common sense that you
21 would buy this expensive, pretty complicated machine and you
22 would have it for less than three months, but that somebody who
23 works for the company that sold it to you could say to their
24 investors, touting it, saying they utilized it and integrated,
25 when you thought it didn't -- somebody said it didn't work, it

1 never worked, which is borne out by the fact that they sold it
2 three months later. I mean, I never spent a lot of money on
3 something that worked, had it for three months and then sold
4 it. I'm sure that they didn't get more than they paid for
5 those machines when they sold them to somebody else.

6 THE COURT: Here's what paragraph 41 says. It's
7 careful. It says: FE4, who worked as a General Manager for
8 Latin America from February '19 until December of 2021 -- so
9 that employee was gone by the end of the year -- corroborated
10 FE3's account -- hold on a second -- explaining that Sticker
11 Mule decided to start printing t-shirts and had purchased three
12 or four of the largest machines at the end of 2021, but Kornit
13 was unable to get them to run properly, pushing Sticker Mule to
14 get rid of its Kornit machines in the beginning of 2021 and
15 purchase a competitor's product instead.

16 So what you're saying to me now is a little bit
17 different than what's in this Complaint. They had problems
18 from the get-go. They never worked right. It doesn't say that
19 clearly in 41. If that can be said that they never worked and
20 there was problems from day one and within three months they
21 got rid of them, that's a little bit different than the way
22 it's carefully pled in 41. So I'm not satisfied that it is
23 clear enough.

24 An equally plausible construction of paragraph 41 is
25 they had them, and they did -- they tried to get them working

1 and then ultimately they could never get them working properly
2 and then two months later they got rid of them. But he didn't
3 make that statement in December or January or February, he made
4 it November 10th when he probably first -- do you know when
5 they first delivered the machines to Sticker Mule?

6 MR. HARROD: I don't think we know that exactly.

7 THE COURT: Okay.

8 MR. HARROD: I appreciate Your Honor's comment about
9 the way paragraph 41 is worded, but it is clear or it does say
10 Kornit was unable to get them to run properly, like, at any
11 point.

12 THE COURT: Listen to me. Make it clear. It's not
13 that clear.

14 MR. HARROD: Okay.

15 THE COURT: All right? Take another shot.

16 The defense is doing great, by the way. All right.
17 No need to talk yet.

18 All right. Let's talk about the pull-forward which
19 is sort of connected to the trends, right?

20 Plaintiff alleged that Kornit pulled forward revenue
21 to meet revenue guidance in Q1 of 2022. This is in paragraph
22 209.

23 Defendant Rozner stated that during the Q1 2022
24 earnings call that the pull-forward was a timing issue.

25 So 92 says the following. Again, the famous customer

1 service executive FE3 says there was, Recognizable trend issues
2 recognized by some of the Company and ignored by others until
3 it was too late to stop the tailspin.

4 He said that in November and December of 2021, that's
5 the last quarter, when he was still in his role at Customer
6 Success, Kornit saw a slowdown in their sales. As FE3
7 explained, they're typically very slow -- I'm sorry. Very busy
8 season when they produced a tremendous amount of product and
9 that period wasn't as busy as the last couple of years and not
10 as busy as Kornit had projected; that FE3 reported that as soon
11 as the pandemic mandates ended, everyone got back outside and
12 Kornit saw the negative effects of their sales in the fourth
13 quarter of 2021.

14 FE was in weekly and sometimes twice weekly calls
15 concerning sales projections and revenues. He had discussions
16 with the president and vice president of the Americas division
17 about what was going on with the 2021 slowdown.

18 FE3's statements do not refute the alleged -- here's
19 my concern: He talks about the slowdowns, but this whole thing
20 about whether there was a push forward of revenue, I'm not sure
21 that's clearly false.

22 MR. HARROD: Your Honor, there's some -- I think
23 there's some noise around this. The defendants say that they
24 didn't have to disclose the pull-forward, maybe that's right.

25 That's not what we allege. What we allege is that

1 Rozner -- the analyst suspected this because what Samuel said
2 on the call -- this is a little bit of a deep cut. On the Q1
3 call Samuel says --

4 THE COURT: Q1 in 2022?

5 MR. HARROD: Yes. That's when this transaction
6 occurred, said we had some late arriving revenue.

7 So the analyst, smart, says, like, that sounds weird.
8 Did you pull forward any revenue from the second quarter?
9 Rozner says no. He affirmatively says no. So that's one
10 thing.

11 So what we allege is false about this is really in
12 paragraph --

13 THE COURT: So -- wait. The late arriving revenue
14 from -- that came in 2022 that was attributable to 2021?

15 MR. HARROD: No, no, no. He's talking to the analyst
16 about the quarter.

17 THE COURT: And this is what time? This is the
18 beginning of?

19 MR. HARROD: The statements are made -- these
20 statements are made in May; they relate to the quarter that
21 ended in March.

22 THE COURT: May of '22?

23 MR. HARROD: Correct.

24 THE COURT: And this is in the Complaint?

25 MR. HARROD: This is in the Complaint. In paragraph

1 93 we talk about this, and FE3 was told that this happened. So
2 Rozner says it didn't happen, our witness says it did.

3 THE COURT: What did happen? What happened?

4 MR. HARROD: That revenue was pulled forward. He
5 says he learned this from the president of Kornit's largest
6 division, president of Americas, this is Mr. Meyo, who reported
7 directly to Samuel. That's paragraph 93 of the Complaint.

8 According to FE3, the decision to bring forward
9 revenue was a direct result of the reports of the slowdown
10 being given to management.

11 That's the last sentence.

12 And the second sentence of that paragraph 93 says, To
13 cover the anticipated miss in first quarter 2022 forecasts,
14 according to FE3, projected revenue for the second quarter of
15 2022, or book to bill revenue, was brought into the first
16 quarter to stave off the inevitable reality that Kornit was in
17 a tailspin.

18 So this person sent this.

19 FE2 indicated -- and this is in paragraph 89. He
20 talks about Samuel, the CEO, calling up salespeople at the end
21 of the quarter and saying, like, we need more revenue. So this
22 is something that the CEO is known to do.

23 Now, just to be clear, I want to be honest, FE2
24 didn't say -- he didn't have knowledge specifically of this
25 Amazon pull-forward, but he has Amazon -- he has knowledge of

1 the CEO calling salespeople up and doing this.

2 THE COURT: Where is that in the Complaint?

3 MR. HARROD: That's paragraph 89, Your Honor.

4 THE COURT: Okay.

5 MR. HARROD: And so, you know, there's evidence of
6 this. And then FE7 -- this is in paragraph 90 -- says that the
7 company had the ability to accelerate revenue from Amazon.

8 One other corroborating fact here beyond those is
9 that they took money basically from the second quarter and put
10 it in the first quarter. The second quarter of 2022, that's
11 when the Class Period ends, when they preannounce the results,
12 was terrible. So it was borne out. They borrowed money from
13 one quarter, moved it up a quarter. And guess what happened in
14 the next quarter? It wasn't good at all.

15 So they tried to save one quarter for the next.
16 Maybe they were hopeful that something -- some future event
17 would save them, it did not, and this sort of came out in that
18 manner.

19 So we have one person who said it happened. We have
20 an analyst who is suspicious that it happened. We have two
21 other people who make statements that there was behavior within
22 the company consistent with it happening. And then you have a
23 really bad second quarter that the revenue was pulled from
24 which further corroborates or supports our conclusion.

25 THE COURT: Let me ask you a question. It's a matter

1 of degree, too, isn't it? Do you have any idea how much was
2 pulled forward?

3 MR. HARROD: We don't allege that, Your Honor.

4 THE COURT: So in other words, because what
5 defendants are saying is that it doesn't violate GAP. There's
6 no reason to say that -- you can't move -- if it comes in late,
7 you can move it back.

8 I would think it all goes -- if you're saying that
9 this was part of an effort to cover up the other issues we
10 talked about, a decline, a trend, a decline, to make it look
11 better than it is, to show better numbers to the analysts, it
12 has to be a matter of degree. So do you have any sense through
13 your witnesses how much we're talking about?

14 MR. HARROD: Well, I can't -- I don't know the answer
15 to that question, Your Honor, because I don't have the facts.

16 What I do know is that the CFO was asked if you do
17 it; he said no. Our witnesses say he did it. That's false.

18 Whether it's -- I mean, it's obviously, I assume, a
19 material amount of money or the CEO would have just, I guess,
20 told the truth and said, yeah, there was some revenue from
21 Amazon, we accelerated it. It was you know, a hundred thousand
22 dollars. It would have been a rounding error, nobody would
23 have cared, it would have been fine.

24 But he didn't say that. We cite the Plantronics
25 case. There's lots of cases that we can cite for Your Honor

1 that say not every statement has to represent a GAP violation
2 to be false. We're not alleging that the accounting was false.
3 I would love to be able to do that. Maybe I'll be able to do
4 that in my next complaint.

5 But what I say in this Complaint, the CFO got asked a
6 pointblank question. He gave an answer that we allege to be
7 not true. It's material. They don't allege it's not material.

8 THE COURT: I hear you. Let me see if anyone from
9 the defense would like to respond.

10 MS. SESHENS: Yes. Thank you, Your Honor. Dana
11 Seshens from Davis Polk.

12 A couple of points on this, Your Honor. I think,
13 number one, the allegation in 209 is the question and answer
14 from the analyst and the CFO who doesn't just say no but gives
15 a detailed explanation of what actually happened.

16 When you look at what FE3 has to say, it's entirely
17 vague and not firsthand, and bear in mind that they have failed
18 to allege that FE3 has a basis for this knowledge. This is the
19 former --

20 THE COURT: Customer service rep.

21 MS. SESHENS: Who basically ran the service
22 department. And the allegation is that Chuck Meyo told him at
23 some undetermined time, in some undetermined way, and there's
24 no allegations of Chuck Meyo's source of this information. And
25 so what Chuck teaches and it's following is there has to be a

1 credible basis from which to infer that the FE allegations here
2 are plausible or credible and that the Former Employee would
3 have a basis to know the information, and that's just
4 completely missing.

5 The other allegations as well that Mr. Harrod
6 referenced in terms of trying to get more revenue at the end of
7 the quarter, those are of an entirely different nature. Those
8 are cut deals, the allegations are. I'm not, obviously, saying
9 they're true, but that is, strike a deal if you can, we want to
10 enhance the revenue, as they've alleged it. That's very
11 different than saying we're going to pull forward from one
12 quarter to another. It's apples and oranges.

13 The only evidence of the alleged falsity of
14 Ms. Rozner's statements about the pull-forward that the analyst
15 asked is FE3, which we would submit, Your Honor, is not
16 credible and insufficiently pled.

17 THE COURT: So I'm going to tell Mr. Harrod to -- I
18 think there's some concern from the Court about the facts --
19 the basis for FE3's knowledge. So if he relied on someone else
20 and you need to really pull that together in a more clear and
21 unmistakable way.

22 There's, again, as counsel just pointed out, he is a
23 customer service person, or she, FE3. If he's relying on
24 information from someone else, FE3 statements need to have more
25 concrete facts demonstrating the falsity of the statements. So

1 I'm going to give you an opportunity to do that when you
2 replead.

3 All right. Let's talk about the service contracts
4 that we talked about a minute ago.

5 All right. Paragraph 118: Defendant Samuel in
6 response to an analyst question about whether the Company's
7 service contracts were singular year with the potential for
8 renewal for multi year, that every machine we are selling, we
9 are selling it with a contract. There's no other way to buy a
10 machine; it's not for one year. It's for multiple year
11 contracts.

12 And plaintiff says the reality was that they provide
13 a six-month warranty and customers could buy an additional one
14 year when they had the option to renew.

15 So I guess my question to defendant, isn't that
16 factually false? I mean, he said there's no way and it's not
17 for one year and the contracts were for six months.

18 MS. SESHENS: So, Your Honor, I think that statement
19 has to be read in the context of the question that was being
20 asked, which is from an analyst who was saying can you sort of
21 tell us more about the increase or the improvement in the
22 attached rate, which means how many people are sticking with
23 their contracts. Is that from single year contracts or is that
24 from multi year contracts? And the basis for that question
25 derives from Kornit's disclosures about how they run their

1 contracts. And that's in its 20-Fs year after year.

2 Plaintiffs don't dispute that those disclosures are false.

3 So in the context of answering that question,
4 Mr. Samuel is talking about, well, we sell the machines with a
5 contract. That is not alleged to be false. That is consistent
6 with the disclosures and we don't understand plaintiffs to be
7 challenging that.

8 He then goes on in response to the question about the
9 attached rate to say that they were multi year contracts. And
10 in the context of that, we would submit it's not false. He was
11 addressing the question. The 20-Fs are clear as to how this
12 all works and in the broader context of what he was addressing
13 there that it is not factually false.

14 THE COURT: I don't need anything more on this. I'll
15 take this one under advisement.

16 All right. KornitX revenue, Defendant Samuel, in
17 paragraph 187, touted KornitX as a major revenue driver, noting
18 KornitX is a platform that enables connectivity between any
19 marketplace, any a brand, any e-commerce network, et cetera.

20 Then on June 8th, he restated that: Of course,
21 KornitX is growing very fast, and, we see a massive growth
22 coming into it.

23 Here we are again with federal -- I mean, Former
24 Employee 3, he says, there was no revenue coming from KornitX,
25 and Former Employee 10 called it crazy, kind of crazy given

1 internal sales target. And Samuel shortly after the Class
2 Period stated that KornitX only generated a couple million,
3 although we know there was a couple million -- that was, in
4 fact, true, it was a couple million, it was still working on
5 stabilizing the platform.

6 Let's talk about the falsity issues, Mr. Harrod.

7 I'm a little concerned again about the lack of
8 specificity and timing of the statements by the employees.

9 MR. HARROD: I appreciate that.

10 Look, I mean, we have three different former
11 employees who weigh in here who provide different information
12 that is consistent with the idea, which the CEO said in
13 November of '22, which is that it didn't generate not
14 meaningful enough revenue and that it needed to be stabilized.
15 They're talking about this as a hundred-million-dollar revenue
16 source two years -- one year after these statements in '22 are
17 being made.

18 So the FE10 says that the targets -- he describes in
19 detail what the quarterly targets were for the second, third,
20 and fourth quarters -- this is in paragraph 73 -- which total
21 under two-million dollars. There's four salespeople, he says,
22 and a manager. So if I -- by my math, if I add that up and
23 then multiply it times by five, it's under \$2 million.

24 So the target that the company had for this product
25 was under \$2 million for '22, and the people also say that it

1 didn't work. He says he didn't sell any of it in the time that
2 he was at the company. And this is corroborated by the CEO's
3 statement that it needed to be stabilized.

4 So they're making statements. They're using this,
5 again, as sort of the beam under the house of a billion dollar
6 company and they're saying it's a robust platform. That's
7 paragraph 130.

8 Paragraph 156: We see great adoption.

9 Paragraph 168: We see strong adoption.

10 180: KornitX is already generating
11 multi-million-dollar revenue on transactions to Kornit.

12 That was in the middle of '22. I don't know how that
13 could be true if it had only generated, by the CEO's own
14 estimation, \$2 million at the end of that year.

15 THE COURT: I hear you. I hear you. I understand
16 the argument, but in terms of the other employees, to the
17 extent that you can give more timing details, it would
18 strengthen the argument. So I'm going to give you an
19 opportunity to replead that.

20 Let's talk about -- I just want to say I'm not going
21 to address every issue that was raised. Some of them are legal
22 issues; some of them are issues that I have already sort of
23 come to terms with, but I know these are critical to the 10b
24 claims and I want talk about the Section 11 and Section 12
25 claims. I hear the issues at standing and that's something I

1 don't think I need any further briefing on, I'm just going to
2 make a call on.

3 But I also want to talk about the SPO misstatements.
4 I think that's really critical to the Section 11 and the
5 Section 12 claims. I know Section 12 is a standing issue,
6 that's pretty significant, but I want to talk about the Section
7 11 claims and the misstatements. Okay.

8 So let's talk about -- so there was initial public
9 offering back on '15 and there was a second public offering I
10 guess -- what's the date? March -- what's the date of the
11 second public offering?

12 MR. HARROD: The second was in November of '21.

13 THE COURT: November 23rd of '21. It was the 2021
14 offering, right? The registration statement was filed
15 September 14th.

16 So let's look at these statements pretty carefully
17 because, again, I think I'm going to require -- I'm going to
18 give plaintiff the opportunity to replead some of these
19 misstatements as well.

20 All right. Kornit Systems, Inc., and other
21 consumables may contain undetected errors when first introduced
22 and that such problems could cause to incur significant
23 warranty and repair costs, et cetera.

24 And the allegations, that at that time, the risk had
25 already been materialized. Not may contain but did, in fact,

1 contain undetected errors.

2 Is that your argument, Mr. Harrod?

3 MR. HARROD: Yes, that's right.

4 THE COURT: All right. And remind me, what are the
5 facts that demonstrated that the risks had already materialized
6 was false?

7 MR. HARROD: So I want to start by saying something
8 that I know Your Honor knows, which is that we're talking on
9 the Securities Act Claims on the Sections 11 and 12.

10 THE COURT: Right.

11 MR. HARROD: So Rule 8 -- so we're in the Rule 8
12 world.

13 THE COURT: I know. Different world. I'm still in
14 the fraud world but I'll go back to the negligence world.
15 Okay.

16 MR. HARROD: Right. So here we are -- our
17 understanding is that the standard is plausibility. I can tell
18 you from our briefing and from our Complaint what the
19 underlying allegations are that relate to this. I think that
20 we talk about many of these kinds of statements and underlying
21 facts in the Complaint in the 10b section. I think -- we think
22 this is enough of a basis for falsity under the Rule 8
23 standard.

24 But just to give you some framework, we have
25 allegations in the Complaint that the service department was a

1 mess. FE2 I think says it sometimes took customers up to 12
2 days to get a service call; that the executives were aware that
3 there weren't enough service technicians; that the CEO and CFO
4 said there's no more budget for service. There are discussions
5 of product breakdowns.

6 THE COURT: Let me stop you for a second. That's
7 another part of the 20-F, right, that talks about Kornit's
8 aspiration to make the appropriate investment and service
9 support and had to strive to deliver the best customer
10 experience. That's a different part.

11 I'm talking about the first part of it which talks
12 about, May contain undetected errors. Okay? And you allege at
13 the time, the risk already materialized, right?

14 You have about five different concerns that show that
15 these were misleading statements, right?

16 MR. HARROD: I think -- I was focusing on the second
17 part of the statement which incurs -- May cause us to incur
18 significant warranty and repair costs, divert the attention of
19 our engineers.

20 THE COURT: Okay. So continue.

21 MR. HARROD: That's what I would say about that
22 statement, but we think the defendants have a sufficient
23 roadmap to understand why we think that statement is false.

24 THE COURT: I'll hear from defendants.

25 MS. SESHENS: Your Honor, I think on this point in

1 particular, there's no basis for falsity because this risk that
2 they're claiming had already manifested was disclosed as
3 something that had happened. And the 20-F is clear that the
4 language in, We have experienced these errors -- talking about
5 products and defects or defects in the past during the
6 introduction of the new systems and system upgrades, and we
7 expect that these errors or defects will be found from time to
8 time going forward.

9 So under the law, they can't base a Section 11 claim
10 on that kind of statement being false and misleading when the
11 very risk they claim wasn't disclosed, in fact, was.

12 I think whatever their allegations of falsity they
13 may claim on the plaintiff said, they fall apart and they can't
14 withstand the actual disclosure that was made which precludes
15 this claim as a matter of law.

16 THE COURT: Because of the statement that Kornit had
17 experienced these errors or defects in the past?

18 MS. SESHENS: Yes. Their theory is that these things
19 may happen was false or misleading because they, in fact, did
20 happen, but the disclosure was, in fact, these things have
21 happened and they may happen again in the future.

22 THE COURT: Mr. Harrod, that is what it says. Had
23 experienced these errors or defects in the past and expect
24 these errors would be found from time to time in the future,
25 and they may contain additional undetected errors.

1 MR. HARROD: It sounds to me that they're saying that
2 the issue -- that the 20-F says that the issue was in the past
3 and was resolved. And I also think that the argument that
4 they're making, effectively, requires the Court to determine
5 what -- get into the mind of investors and understand basically
6 that the truth is on the market, which I don't think you can do
7 at this state.

8 THE COURT: That the what is on the market?

9 MR. HARROD: The truth, truth, that weighing, you
10 know, this is what this disclosure says, this is what the
11 alleged false statement is in coming to a conclusion about --

12 THE COURT: I hear you.

13 All right. I will take this under advisement.

14 Anything else -- is there anything else anyone would
15 like to add before we conclude?

16 MR. HARROD: No, Your Honor. I mean, there's a lot
17 of things I would like to add.

18 THE COURT: I know you do.

19 MR. HARROD: I appreciate your time and appreciate
20 what you do did for us today.

21 THE COURT: Okay.

22 So here's what I want you to do. I want you to meet
23 and confer. You seem like lovely people and you get along.
24 It's not like, you know, we're gonna have problems here. Meet
25 and confer and figure out a time for filing a new complaint,

1 first amended, I guess, complaint, and then a briefing
2 schedule. As soon as that can be done, send me a letter so I
3 know when to expect it.

4 I wish it could be done tomorrow so it would be fresh
5 in my mind but, of course, my short-term memory is not as good
6 as it used to be. So we continue.

7 So get me that schedule whatever time you need and we
8 will reconvene when the new briefing is done.

9 Thank you, guys. You did a great job on the briefs,
10 I really appreciate it, and your oral argument was excellent.

11 Thank you. Have a great weekend.

12 MR. HARROD: Thank you, Your Honor.

13 MS. SESHENS: Thank you.

14 THE COURT: Take care, bye-bye.

15 (Time noted: 4:22 p.m.)

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18 -----
19 I certify that the foregoing is a correct transcript
20 from the record of proceedings in the above-entitled matter.

21
22
23 /S/Diane DiTizii, CCR, CRR, RMR, RDR

08/16/2024

24 Federal Official Court Reporter

Date